

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Robin **MOTE**,)
)
Plaintiff,)
)
v.)Civil No. 5:16-cv-02388-RBH
Nancy A. **BERRYHILL**,)
Acting Commissioner of Social Security,)

ORDER

Plaintiff, Robin Mote, brought this action to obtain judicial review of a final decision of Defendant Acting Commissioner of Social Security denying Plaintiff's application for a period of disability and disability insurance benefits. See 42 U.S.C. § 405(g). On July 13, 2017, the court remanded the Commissioner's decision pursuant to sentence four of § 405(g) for further administrative proceedings.

This matter now is before the court on Plaintiff's motion for attorney's fees under the Social Security Act, 42 U.S.C. § 406(b), filed on December 5, 2018. Plaintiff's attorney requests fees in the amount of 25% of Mote's past due benefits, which amounts to \$46,060.00. The Plaintiff's attorney has been granted fees by this Court in the amount of \$4,078.13, under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.

In the United States Supreme Court case of *Gisbrecht v. Barnhart*, 535 U.S. 780 (2002), the Court held that the provision of the Social Security Act limiting attorney fees to 25% of past-due benefits does not displace contingent-fee agreements that are within such statutory ceiling, and instructs courts to review for reasonableness fees yielded by such agreements. In addition, if the claimant has been awarded attorney fees under EAJA, the claimant's attorney must refund

the lesser of the two fees to the claimant. *Id.* at 796.

Upon review of the materials submitted to the Court, the undersigned finds that Plaintiff counsel's request for attorney fees is reasonable. Therefore, it is ordered that the Plaintiff's attorney may collect a fee of 25% of plaintiff's past due benefits, which amounts to \$46,060.00. Plaintiff's attorney must refund to the Plaintiff the EAJA award of \$4,078.13.

January 3, 2019
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge